

Summary of Department of Transportation/Federal Aviation Administration Meeting with Air Transport Association (ATA) and Member airlines - September 19, 2006 at ATA's Offices

DEPT. OF TRANSPORTATION

2006 OCT 26 P 3:51

Re: Clarifying questions on Notice of Proposed Rulemaking for LaGuardia Airport

Prior to the September 19th meeting ATA submitted to the FAA, via e-mail, a list of questions from their members about the LaGuardia NPRM. The list of questions is attached below, as well as a summary of FAA's verbal response to those questions.

FAA answered the questions in the context of the NPRM. The FAA asked for comments on any issue that, in the opinion of the commenter, we did not make clear in the NPRM. DOT/FAA General Counsel also notified airline participants that they could submit sensitive or confidential submissions, and we would maintain the confidentiality.¹ The FAA also stated that notes of the meeting would be placed in the docket.

(1) ATA Question:

"Has the FAA yet decided the method by which it will propose to reallocate operating authorizations once they are withdrawn from incumbent carriers under the 10% withdrawal rule or by the use-or-lose rule?"

FAA Answer:

The NPRM, 71 FR at 51366 indicates that we expect a reallocation process to be developed through subsequent rulemaking.

Also on this page of the FR, the FAA indicates its intention to propose legislation to utilize market-based mechanisms, such as auctions or congestion pricing to redistribute expired Operating Authorizations in the future.

(2) ATA Question:

"Has the FAA placed into the docket the data relied upon to support the proposition of the Port Authority that the LGA terminal is underutilized?"

FAA Answer:

No. The FAA based the targets on maximizing the scarce resource of LGA to what capacity can fit at the airport and did not base it on details of gate analysis.

(3) ATA Question:

¹ FAA has rules on "proprietary" information that may be submitted in a rulemaking docket. These rules may be found in 14 CFR 11.35(b). The regulatory provision states that when the FAA is aware of proprietary information filed with a comment, the FAA places a note in the docket that the information has been received. The FAA places the proprietary information in a separate file to which the public does not have access. Further, the regulation directs the FAA to treat any FOIA request for such information in accordance with DOT procedures found in 49 CFR part 7.

“Is it correct that all small hub/ non-hub flying is exempt from withdrawal, in which case, carriers and their regional carrier code share partners will disproportionately benefit by not being as exposed to the 10% turnover rule as are carriers serving larger airports, even those carriers with far fewer daily operations.”

FAA Answer:

No, it is not true that small hub/non-hub flying is exempt from withdrawal. As a technical matter, as explained in 71 FR at 51366, all Operating Authorizations will expire.

However, the FAA will separate non-hub and small hub Operating Authorizations from the other Operating Authorizations to ensure that a disproportionate number of small community Operating Authorizations do not expire any given year.

(4) ATA Question:

“Has the FAA/DOT considered the impact of the proposed rule on the EAS program?”

FAA Answer:

FAA welcomes comments with regard to the impact of this proposed rule on the EAS program.

(5) ATA Question:

“Please explain the process by which trades will be unwound at the time the slots are allocated on the basis of holdings and then retraded to put existing airline schedules back to the point they were immediately prior to the effective date of the new rule.”

FAA Answer:

The FAA NPRM proposes to grandfather Operating Authorizations to each carrier “holding” slots and slot exemptions based on schedules as of October 1-6, 2006. 71 FR 51365. FAA proposes that the current slot “holder,” if an air carrier, would retain the operating authority, even if another carrier, due to a lease/trade agreement, were operating the “slot”. In other words, if an air carrier is operating a slot that is “held” by another air carrier (through a lease agreement, trade or some other arrangement), the carrier that actually “holds” the slot would be grandfathered the Operating Authorization, and not the air carrier that was operating the slot.

If an air carrier were operating a slot that is “held” by a non-air carrier (*e.g.*, a bank) the Operating Authorization would be grandfathered to the first air carrier with a direct relationship to the non-carrier “holder.”

At the time that Operating Authorizations are initially grandfathered in the Final Rule, “holders” of those Operating Authorizations could file the appropriate paperwork to FAA to maintain the trade/lease agreements.

At the meeting FAA explained that the same process would apply to trades/leases under the proposed Order. FAA would “grandfather” operating authority to the “holder” of slots, but carriers could file paperwork with FAA to maintain leases/trades that are currently in place.

The proposed order would assign operating authority for arrival/departure to the air carrier that holds equivalent slot or slot exemption authority (or the air carrier that operates it if a non-air carrier holds the authority) under the HDR or slot exemption rules as of January 1, 2007. The order permits transfers and trades.

(6) ATA Question:

“By what method will a carrier select the 10 operating authorizations that will not be subject to recall on an annual basis?”

FAA Answer:

As a technical matter, all Operating Authorizations are subject to finite life and to withdrawal. The baseline authorizations would not be subject to the target aircraft size requirements, although they would be subject to an 80% use-or-lose provision, and would be withdrawn if the carrier does not meet that requirement.

The NPRM preamble, p. 51368, states each year, carriers would notify FAA which of their Operating Authorizations they intend to designate as baseline operations. FAA would not be involved in assisting air carriers select their “baseline” operating authorizations.

(7) ATA Question

(a) “Clarify the apparent discrepancy between §93.64(b) – which states that rights held will be awarded to holding carrier-- and the text on page 51365, which states that the operating rights will go to holder on record.”

FAA Answer:

See discussion under question (5).

(b) “Based on the text set out on page 51365, stating that “If a carrier were allocated operating rights during the week of October 1-6, 2006, but those rights were held by an entity other than a certified carrier, the corresponding Operating Authorizations will be assigned to the operating carrier,” is the FAA’s intent to assign operating authorizations held by a non-airline but operated by carrier X during the base week to the operator rather than the current holder?”

FAA Answer:

See discussion under question (5).

(8) ATA Question:

“Clarify whether Operating Authorizations will terminate in pairs (as in an equal number of arrival and departures or corresponding arrivals or departures).”

FAA Answer:

The NPRM does not specify. FAA welcomes comments on the topic.

(9) ATA Question:

“With respect to reversion and withdrawal of Operating Authorizations, clarify what happens in cases where additional capacity has been created.”

FAA Answer:

Operating Authorizations that revert back to FAA as a result of failing to meet the target aircraft size or the use-or-lose requirement would be reallocated via a lottery, as explained in 71 FR 51371. The proposed rule does not explicitly address how Operating Authorizations would be allocated if additional capacity were to become available, above the proposed hourly cap.

FAA and DOT are evaluating appropriate market-based mechanisms for allocating capacity at LaGuardia in the long-term. (71 FR 51363)

(10) ATA Question:

“What is the FAA’s rationale for requiring carriers or other interested parties to obtain all details of auctions only through FOIA requests?”

FAA Answer:

NPRM does not state that the details of auctions would only be available through FOIA requests. NPRM indicates that a record of each sale and lease would be kept on file by the FAA and be made available to the public upon request. We do not anticipate that airlines will have to trigger FOIA to obtain records.

The FAA also invited comments on the auction design features. (71 FR 51373)

(11) ATA Question:

“With respect to the requirement that carriers designate ten OAs annually by March 1, 2008, does this reflect an objection by the FAA to establishing a mechanism for carriers to change their baseline Operations during the year in order to be able to manage operations at LGA in a flexible manner in response to possible changes in market demand? Without this ability, carriers would face the problem of having a relatively set schedule and fleet plan one year out to fully analyze and select the best flights.”

FAA Answer:

Baseline operations are explained on page 51368. Each year carriers would notify FAA which of their Operating Authorizations would be designated as “baseline” operations for that given year. FAA does not propose to allow carriers to change their designation of baseline operations during the year.

We welcome comments on baseline authorizations and the impact of them on schedules and fleet planning.

(12) ATA Question:

“On page 51373, FAA states that reservations could be made no more than 72 hours in advance of the proposed flight time; however, §93.71 does not specifically state an advance time limit. Is there really such a limit?”

FAA Answer:

Preamble at 51373 states that reservations for unscheduled operations could be made no more than 72 hours in advance of the proposed flight time and that public charters are bound by this rule too. Yes, FAA intends for the 72-hour notice to apply to §93.71.

(13) ATA Question:

“It is not clear against what year the definition for non-Hub and small-hub airport size definitions are referenced. Will it be a static list or change each year?”

FAA Answer:

The definitions for hub sizes are available on FAA’s website. Each year the FAA publishes the list of primary airports, by hub size. The CY 2005 Primary Airport list is available on FAA’s website at:

http://www.faa.gov/airports_airtraffic/airports/planning_capacity/passenger_allcargo_stats/passenger/index.cfm?year=2005

The list of non-hub and small hub airports would not be static. Each year FAA would rely on the most recent report to identify non-hub and small hub airports.

(14) ATA Question:

Regarding reporting requirements:

- (a) “§93.72(a)(1) states that “annually, beginning March 1, 2008 each carrier must report,” but §93.69(c) states that withdrawals can start January 1, 2009. Is the first year only 9 months?”

FAA Answer:

The reporting year would from January to January. However, FAA proposes to allow carriers until March 1 of each year to compile and submit their report.

FAA welcomes comments related to the proposed reporting requirements. FAA also welcomes comments related to how much advance notice carriers would need prior to FAA withdrawing Operating Authorization(s) that do not meet the target aircraft requirement and/or the 80% minimum usage requirement.

- (b) “The NPRM (on page 51370 and in § 93.69) states that the annual average aircraft size report will be due by March 1st, beginning March 1, 2008 for calendar year 2007. Will this report be ignored since the aircraft targets would not begin until calendar year 2008?”

FAA Answer:

The first report, due March 1, 2008, would serve as a trial run for both air carriers and FAA.

Operating Authorizations would not be subject to the target aircraft size until the 2008 calendar year (report for that year would be due by March 1, 2009).

(15) ATA Question:

“With respect to the provision that prohibits OAs that [were] obtained in a weighted lottery from being bought, sold, leased or otherwise transferred until one year has elapsed from their assignment, would this prohibition apply to transfers to an airline partner who operates at LGA only under the airline code of the holder?”

FAA Answer:

Airline could operate Operating Authorization(s) that were obtained by a codeshare, as long as the carriers market under the same parent airline. For example, Delta could operate an Operating Authorization that was obtained by Comair.

(16) ATA Question:

“Clarify why the FAA believes the Operating Authorizations need to be allocated in time windows 50 percent shorter than are currently in existence.”

FAA Answer:

Carriers are currently able to schedule flights anytime within the 30-minute slot window. It is believed that these schedules may contribute to congestion and delays at the airport. One objective of this rule is to improve operational performance at the airport, and FAA does not believe it would be prudent to grant historic status to schedule levels that are not realistic. (71 FR 51365).

FAA welcomes comments on the appropriate scheduling window.

(17) ATA Question:

Does an Operating Authorization designated for small community service continue as a small community Operating Authorization even if transferred, traded, or reallocated?

FAA Answer:

Yes.

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